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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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Fundamental Right To Privacy In Digital Age: An Analysis Of The Impact Of Judgment Of Justice K. S. Puttaswamy In Cyber Crimes

Authored by- Prerana Anand And Dr. Sirish Kulkarni

Abstract

In India, the judgment of Justice K S Puttaswamy (Retd.) versus the Union of India delivered on 24 August 2017 by Supreme Court has made it a historic day as it has crowned Indian Constitution with another jewel namely: 'Fundamental Right to Privacy'. This ruling of Supreme Court is cherished by all the segments of society; however, it has far-reaching impact in the context of emerging dimensions of cyberspace. In the new millennium global economy has learnt to live in a new revolution and the present society has experienced -The Entrance of World from Physical World to Cyber World. The present universe is surrounded by the power of new *mantra* namely 'Information Technology'. By chanting this mantra the whole world has become a 'global village', the economy has become 'global-economy' and space has become a 'cyberspace'. In cyberspace, the modes of the commission of crimes have been transformed absolutely from traditional to e- modes. On the one hand side Internet has become part and parcel of our life, however, on the other hand, side, it has become a heaven for the manipulation as well as hacking of sensitive personal information. This article focuses on 1.) Emerging cybercrimes like Cybersquatting, Cyberstalking, Vishing, Cyber Defacement, Clicking, Downloading pictures without consent and uploading on Internet, Cyber Trauma among young generation and Cyber Blackmailing; and 2.) An impact of the judgment of Hon'ble Supreme Court in Justice K S Puttaswamy (Retd.) on the regulation of cybercrimes

Key Words: Emerging Cybercrimes, Fundamental Right to Privacy, The Information Technology Act, 2000 (2008).

1. Introduction:

The ubiquity of information in the lap of ‘Silicon Revolution’¹ has tremendously brought the privacy of individuals into the forefront of the Jurisprudential consciousness. In this context, Policy makers, academics, legal practitioners and the government continue to examine old centuries question regarding whether India has a Constitutional Right to Privacy or not? In India, the judgment of Justice K S Puttaswamy (Retd.) versus the Union of India delivered on 24 August 2017 by nine-judge Supreme Court bench under the chairmanship of Justice Shri Justice Jagdish Singh Khehar, has made it a historic day as it has crowned Indian Constitution with another jewel namely: ‘Fundamental Right to Privacy’. This ruling of Supreme Court is cherished by all the segments of society; however, it has far-reaching impact in the context of emerging dimensions of cyberspace. In the new millennium global economy has learnt to live in a new revolution and the present society has experienced -The Entrance of World from Physical World to Cyber World. The present universe is surrounded by the power of new *mantra* namely ‘Information Technology’. By chanting this mantra the whole world has become a ‘global village’, the economy has become ‘global-economy’ and space has become a ‘cyberspace’. In cyberspace, the modes of the commission of crimes have been transformed absolutely from traditional to e-modes. On the one hand side Internet has become part and parcel of our life, however, on the other handside, it has become a heaven for tarnishing the veil of privacy on the Internet. In the digital world, Privacy has long been a matter of significant concern in the minds of every human being. As India grew, technological advances in the dissemination of knowledge caused public demands for protection of privacy rights; especially in cyberspace.² It is a popular saying that:

“After a while, you learn that privacy is something you can sell, but you cannot buy it back.”

Bob Dylan

**Prerana Anand, LLM with Specialization in Family Laws, IInd Semester, Symbiosis Law School, Pune

¹ Silicon is a semiconductor. It is a substance whose electrical conductivity can be manipulated. Computer chips are in essence tiny assault courses for electrons. The first integrated circuit - as computer chips were originally created by an engineer named Jack Kilby at Texas Instruments on 12 September 1958. Kilby's chip was made of germanium that is another semiconducting element. But within months a team led by Robert Noyce at a rival company, Fairchild Electronics, created a chip based on silicon. The entire modern computing industry can trace its lineage back to this one chip, though modern chips are millions of times more complex. Indeed, the miracle of the modern microprocessor is the vast number of transistors the industry has learned to pack on to a tiny wafer of silicon. Retrieved from: <<http://www.bbc.com/news/magazine-28600802>> visited on 3 October, 2017.

² Database, Law Journal Library, 60 Vand. L. Rev. 1 (2007) p. 196.

Keeping in view various interpretations of Article 21 by Indian Judiciary, it is observed that there are variations in the privacy discussions and, the basic tension has always been among the needs of the government the desire of the public to consume information through mass media, and the right of an individual to his private world.³ In today's rapidly advancing technological age, it seems as though privacy has increasingly fallen by the wayside. From private personal information stolen by hackers to information lost through careless transfer online, downloading a picture of any person through software, manipulate and upload in an objectionable manner, phishing, pharming and misuse of sensitive personal information by government and private agencies have become common trend.

2. 'Right to be Left Alone': Meaning of Right to Privacy

Privacy is a concomitant of the right of the individual to exercise absolute control over his or her personality. It finds an origin in the notion that there are certain rights which are 'natural to' and 'inherent' in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights. In 1690, John Locke had in his *Second Treatise of Government* observed:⁴

"The lives, liberties and estates of individuals are as a matter of fundamental natural law, a private preserve. The idea of a private preserve was to create barriers from outside interference."

In 1765, William Blackstone in his *Commentaries on the Laws of England* spoke of a "natural liberty". According to William Blackstone:

"Absolute rights were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual."⁵

The term 'inalienable right' was incorporated in the Declaration of the Rights of Man and of the Citizen (1789) adopted by the French National Assembly in the following terms:

³ibid.

⁴The *Second Treatise of Government* remains a cornerstone of Western Political Philosophy. Locke's theory of government based on the Sovereignty of the people has been extraordinarily influential since its publication in 1690--the concept of the modern liberal-democratic state is rooted in Locke's writings. Locke's *Second Treatise* starts with a liberal premise of a community of free, equal individuals, all possessed of natural rights. Retrieved from:<<http://www.sparknotes.com/philosophy/locke/section1.rhtml>> visited on 1st October 2017.

⁵Retrieved from:<<https://ebooks.adelaide.edu.au/b/blackstone/william/comment/book1.1.html>>, visited on 1st October 2017.

“For its drafters, to ignore, to forget or to depreciate the rights of man are the sole causes of public misfortune and government corruption. These rights are natural rights, inalienable and sacred, the National Assembly recognizes and proclaims them-it does not grant, concede or establish them-and their conservation is the reason for all political communities; within these rights figures resistance to oppression”.⁶

According to various philosophers, Right to Privacy is one of the most esteemed natural right and Natural rights are not bestowed by the State, however, bestowed by the Creator of this Cosmos. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, country, religion, sex, color, gender or orientation. Distinguishing an inalienable⁷ right to an object from the object itself emphasizes the notion of inalienability. All human beings retain their inalienable rights (whatever their situation, whatever their acts, whatever their guilt or innocence). The concept of natural inalienable rights secures autonomy to human beings. But the autonomy is not absolute, for the simple reason that, the concept of inalienable rights postulates that there are some rights which no human being may alienate. While natural rights protect the right of the individual to choose and preserve liberty, yet the autonomy of the individual is not absolute or total.

Privacy, in its simplest sense, allows each human being ‘To be left Alone’ in a core which is inviolable. Yet the autonomy of the individual is conditioned by the relationships with the rest of society. Those relationships may and do often pose questions to autonomy and free choice. The overarching presence of state and non-state entities regulates aspects of social existence which bear upon the freedom of the individual. Equally, new challenges have to be dealt with in terms of a constitutional understanding of where liberty places an individual in the context of a social order. The emergence of new challenges is exemplified by this case, where the debate on privacy is being analyzed in the context of free flow of information on Internet. In an age where information technology governs virtually every aspect of our lives, the task before the Court is to impart constitutional meaning to individual liberty in an interconnected world.

⁶ Retrieved from: <<https://www.britannica.com/topic/Declaration-of-the-Rights-of-Man-and-of-the-Citizen>>, visited on 4 October, 2017.

⁷ Inalienable means: Something that is not subject to alienation (separation); the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; e. g., liberty. Inalienable; incapable of being aliened, that is, sold and transferred. Retrieved from: <<https://www.nationallibertyalliance.org/files/footnotes/Rights.pdf>> visited on 2 October 2017.

When I revisit the question whether our constitution protects privacy as an elemental principle, the Supreme Court has expressed its sensitivity by declaring it a 'Fundamental Right'. However, the laws for regulating the Internet and dangers posed in a digital world are not yet clear.⁸

3. Philosophical Overview On Privacy In Physical World Vs. Cyber World:

John Stuart Mill in his essay, 'On Liberty' (1859) gave expression to the need to preserve a zone within which the liberty of the citizen would be free from the authority of the state. According to Mill, "The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."⁹

Austin in his Lectures on Jurisprudence (1869)¹⁰ spoke of the distinction between the public and the private realms: *jus publicum* and *jus privatum*. He has explained the distinction between the public and private realms in the context of 'Dignity' and with its limitations. If the reason for protecting privacy is the dignity of the individual, the rationale for its existence does not cease merely because the individual has to interact with others in the public arena. The extent to which an individual expects privacy in a public street may be different from that which she expects in the sanctity of the home. Yet if dignity is the underlying feature, the basis of recognizing the right to privacy is not denuded in public spaces. The extent of permissible state regulation may, however, differ based on the legitimate concerns of governmental authority.

James Madison, who was the architect of the American Constitution, indicated the protection of privacy as an incident of the inalienable property rights of human beings as follows:

"In the former sense, a man's land, or merchandize, or money is called his property. In the latter sense, a man has property in his opinions and the free communication of them. He has an equal property interest in the free use of his faculties and free choice of the objects on which to employ

⁸Justice K S Puttaswamy (retd.), and anr. versus Union of India and ors. Delivered on 24 August, 2017 by Supreme Court of India.

⁹JOHN STUART MILL, ON LIBERTY¹³ (Batoche Books 1859).

¹⁰ Retrieved

from:https://books.google.co.in/books/about/Lectures_on_Jurisprudence_Or_The_Philoso.html?id=ggwAAAAAYA_AJ&redir_esc=y visited on 1 October, 2017 at 12:45 pm.

them...¹¹

'Privacy' interests are as old as the inception of Jurisprudence in India. As digital technology renders obsolete the traditional jurisprudential theories on which the traditional laws are based, the legal protections themselves become at worst. In 21st Century the information revolution is occurring so fast and affects so many areas of privacy law that the old, adaptive process is failing to address digital privacy problems. Privacy laws are entangled between traditionally developed laws and to meet the novel threats embodied in new technology.¹²

This "digital revolution" has not left privacy untouched. Samuel Warren and Louis Brandeis, the first to systematically describe a legal right to privacy, defined it as essentially a right to protect one's "inviolable personality" from intrusion or unwanted revelation in technological era. In essence, they argued for a "right to be let alone."¹³ Warren and Brandeis revealed with a sense of perspicacity the impact of technology on the right to be let alone:

"Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley¹⁴ calls the right "to be let alone". Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that "what is whispered in the closet shall be proclaimed from the house-tops. For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of portraits of private persons..."¹⁵

Jerry Berman and Deirdre Mulligan highlighted three major digital developments that deeply affect privacy:

- (1) The increase in data creation and the resulting collection of vast amounts of personal data caused by the recording of almost every modem interaction;
 - (2) The globalization of the data market and the ability of anyone to collate and examine this data;
- and

¹¹ James Madison, "Essay on Property", in Gaillard Hunt ed., *The Writings of James Madison* (1906), Vol. 6, at pages 101-103.

¹² Will Thomas DeVries, *Protecting Privacy in the Digital Age*, Berkeley Technology Law Journal, Volume 18 Issue 1, 19 January 2003

¹³ Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 205 (1890).

¹⁴ Though many contemporary accounts attribute the modern conception of the 'right to privacy' to the Warren and Brandeis article, historical material indicates that it was Thomas Cooley who adopted the phrase "the right to be let alone", in his *Treatise on the Law of Torts*. Thomas Cooley, *Treatise on the Law of Torts* (1888), 2nd edition, p. 28. Discussing personal immunity, Cooley stated: "the right of one's person may be said to be a right of complete immunity; the right to be alone.

¹⁵ Warren and Brandeis, *The Right to Privacy*, Harvard Law Review (1890), Vol.4, No. 5, 195-196.

(3) Lack of the types of control mechanisms for digital data that existed to protect analog data.¹⁶ These three developments have changed the ability to manipulate information by digital technology. (1.) The amount of digital information generated is breathtaking. Every interaction with the Internet, every credit card transaction, every bank withdrawal, every magazine subscription is recorded digitally and linked to specific individuals. In the analog world, these transactions were either not recorded at all or recorded on paper in a single location. (2.) All this information, once it is collected in networked databases, can be sent instantly and cheaply around the globe. In this newly-commoditized information market, buyers anywhere can collate and manipulate the data for marketing, profiling, or more sinister purposes. (3.) Individuals have little ability to control this collection or manipulation. Not only does much of this happen far from the reach of regulators, but most people are not even aware what information has been collected or how it is being used. But while all of these changes affect information, not only informational privacy has been affected. Autonomy, too, faces threats from digital technology. When almost every activity leaves a digital trail, government and private monitoring become less about analog surveillance and more a matter of "data mining".¹⁷

4. Emerging Trends Of Cyber Crime In Digital Age:

The word cyber space was first used by William Gibson, in his book, *Necromancer*, written in 1984. Cyberspace can be defined as a virtual world of computers where internet is involved, where individuals can interact, conduct business, do transactions, develop graphics.¹⁸ In 1960s Internet was developed for better communication and research. With the advancement of 'e'-technology everything becomes effortlessly to access as well as pathway to commit crimes without any endeavor. Although there exist firewalls, antivirus software, and other technological solutions for safeguarding the data and networks, some human minds of criminal nature use internet as a tool of crime which is now known as cybercrime committed in cyber space.¹⁹ Cybercrime is not a new form of crime – it is a description applied to new ways and

¹⁶ Jerry Berman & Deirdre Mulligan, *The Internet and the Law: Privacy in the Digital Age: A Work in Progress*, 23 NOVA L. REV. 554- 556 (1999).

¹⁷ Joseph S. Fulda, *Data Mining and Privacy*, 11 ALB. L.J. SCI. & TECH. 105 (2000).

¹⁸ Retrieved from: <http://www.williamgibsonbooks.com/books/neuromancer.asp> visited on 4 October, 2017.

¹⁹ K. Pandey, "Low security makes natives vulnerable to cybercrimes", 2012. Available at: http://articles.timesofindia.indiatimes.com/indore/31863717_1_cyber-crimes-cyber-celcyber-criminals.

means of committing familiar crimes of various kinds, principally involving dishonesty, principally (but not exclusively) involving money and often (but also not exclusively) involving very old forms of crime indeed (such as theft).²⁰ Cybercrime mainly consists of unauthorized access to Data and data alteration, data destruction, theft of funds or intellectual property. Due to these online criminal activities cyberspace is most unsafe place to do business. Hence there is need to enhance awareness about the cybercrime. Recent years have seen a series of “moral panics” regarding information accessible on the Internet and its use for criminal activity.²¹

4.1 Cyber Stalking:

The Internet is a global medium regardless of boundaries and frontier that provides pathway to Cyber-Stalker.²² Cyber stalking means to stalk someone by various modes like: (1) Following the posts of concerned persons, (2.) Noting down personal details i.e. contact details and address, (3) Favorite color, (4) Favorite Food & Restaurant, (5) Downloading pictures and (6) Friends List. This term is used interchangeably with online harassment and online abuse. First stalking case registered in India: The Delhi Police registered India's First Case of Cyber stalking. One Mrs. Ritu Kohli complained to the police against a person who was using her identity to chat over the Internet at the website www.mirc.com, mostly in the Delhi channel for four consecutive days. Mrs. Kohli further complained that the person was chatting on the Net, using her name and giving her address and was talking obscene language. The same person was also deliberately giving her telephone number to other chatters encouraging them to call Ritu Kohli at odd hours. Consequently, Mrs Kohli received almost 40 calls in three days mostly at odd hours from as far away as Kuwait, Cochin, Bombay and Ahmadabad. The said calls created havoc in the personal life and mental peace of Ritu Kohli who decided to report the matter.²³

4.2 Vishing:

As indicated from the word ‘Vishing’- this has come from “voice,” and “phishing,” Vishing is the act of using the telephone in an attempt to scam the user. Just like ‘phishing’ is the use of spoofed

²⁰ Nicholas Cowdery AM QC, “EMERGING TRENDS IN CYBER CRIME”, International Association of Prosecutors 13th Annual Conference New Technologies in Crime and Prosecution: Challenges and Opportunities, Singapore, 27-31 August 2008, <http://www.odpp.nsw.gov.au/docs/default-source/speeches-by-nicholas-cowdery/emerging-trends-in-cyber-crime.pdf?sfvrsn=2>.

²¹ Sean M. Zadigand Gurvirender Tejay, “Emerging Cybercrime Trends: Legal, Ethical, and Practical Issues”, Retrieved from: <http://www.irma-international.org/viewtitle/59936/> visited on 1> October, 2017.

²² Louise Ellison and Yaman Akdeniz, “Cyber-stalking: the Regulation of Harassment on the Internet”, http://www.cyber-rights.org/documents/stalking_article.pdf, visited on 2 October 2017.

²³ Retrieved from: <http://www.informaticsjournals.com/index.php/gjeis/article/viewFile/3059/2143> visited on 4 October 2017.

emails designed to trap targets into clicking malicious links. Instead of email, vishing generally relies on automated phone calls, which instruct targets to provide account numbers for the purpose of financial reward. Vishing Scams work: Criminals set up an automated dialing system to text or call people in a particular region or area code (or sometimes they use stolen customer phone numbers from banks or credit unions). The victims receive messages like: "There's a problem with your account," or "Your ATM card needs to be reactivated," and are directed to a phone number or website asking for personal information. Sometimes criminal quote some information about your account before asking you to enter information, so that anyone could believe it's an authenticated source.²⁴ Presently, many cases of this nature are happening in newspapers.

4.3 Website Defacement: Website defacement is novice offence against websites with an intention to cheat innocent visitors of website. It is an attack on a website that changes the visual appearance of the site or a webpage. These are typically the work of [defacers](#), who break into a [web server](#) and replace the hosted [website](#) with one of their own. Defacement is generally meant as a kind of electronic [graffiti](#) and, as other forms of [vandalism](#), is also used to spread messages by [politically](#) motivated "cyber protesters" or [hacktivists](#). It is more improved concept of Pharming.

4.4 Copyright Infringement:

Copyright is a legal right granted by the government to the authors or creators of works. Under the copyright law, the copyright owner is entitled to a number of exclusive rights such as right to publish the work, control copying, and prepare derivative works and the right to make the material available online. Copyright protection becomes applicable immediately upon creation of the manuscript. The Indian Copyright Act, 1957 governs and regulates the system of copyright in India, however, maximum of the copyright violations occur on Internet like Clicking, Downloading pictures without consent and uploading on Internet.²⁵

5. An Analysis of the impact of Justice K. S. Puttaswamy Judgment in Cyber Crimes:

According to the judgment of Justice K S Puttaswamy (Retd.) versus the Union of India, Supreme Court has made the 'Right of Privacy' has been declared as a fundamental right. This decision has resolved tremendous problems existing in legal documents related to protection of privacy online.

²⁴ Retrieved from: <https://www.cnet.com/news/protecting-yourself-from-vishing-attacks/>, visited on 4 October, 2017.

²⁵ The Copyright Act, 1957 has been amended four times so far in 1983, 1984, 1992 and 1999. http://vle.du.ac.in/file.php/697/Cyber_Crimes_Cyber_Security_and_Legal_Aspects/Introduction_to_Cyber_Crimes_Cyber_Security.pdf.

1. **Clarity on the phrase “None of your Business”:** With this decision clarity has been laid down on most of the pieces of information that fall under the phrase “none of your business”. When an information is shared voluntarily on the Internet (Social Networking Websites, Facebook, Twitter, Instagram, Whats-app and Snapchat) the same may be said to be in confidence and any breach of confidentiality is a breach of the trust. This is more so in the professional relationships such as with doctors and lawyers which requires an element of candor in disclosure of information. An individual has the right to control one’s life while submitting personal data for various facilities and services. This decision has made its application on digital privacy clearly.
2. **Acknowledgment of Control over Dissemination:** Dr. D.Y. Chandrachud, Justice²⁶ in this decision highlighted that: “Recognizing a zone of privacy is an acknowledgement that each individual must be entitled to chart and pursue the course of development of their personality. Justice Rohinton F. Nariman, recognizes informational privacy which recognizes that an individual may have control over the dissemination of material which is personal to him.” Recognized thus, from the right to privacy in this modern age emanate certain other rights such as the right of individuals to exclusively commercially exploit their identity and personal information, to control the information that is available about them on the ‘world wide web’ and to disseminate certain personal information for limited purposes alone.
3. **Viewing Web-Page does not mean Strangers’ Entry:**

Present day the technology has made it possible to enter a citizen’s house without knocking at his/her door. It is an individual’s choice as to who enters his house, how he lives and in what relationship. The privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity. If the individual permits someone to enter the house (here space on the web) it does not mean that others can enter the house. The only check and balance is that it should not harm the other individual or affect his or her rights. This applies both to the physical form and to technology.
4. **Principle of Proportionality and Legitimacy:** This decision laid down the tests to maintain balance between the interference of State and zone of privacy of individual. As laid down in this case, the possibility of the State infringing the right to privacy can be regulated by the test suggested for limiting the discretion of the State: “(i) The action must be sanctioned by law; (ii)

²⁶Justice K S Puttaswamy (Retd.) versus the Union of India, 2017 SC.

5. The proposed action must be necessary in a democratic society for a legitimate aim; (iii) The extent of such interference must be proportionate to the need for such interference; (iv) There must be procedural guarantees against abuse of such interference.” The author suggests that these tests need more elaboration in the context of digital cases.

6. Relevance of ‘Consent’ in Cyber World:

For the first time in the history of India, this decision has laid down the relevance of ‘Concept of Consent’ in digital world. It has clearly attacked against the offence of Identity Theft and Cyber Personation that is already punishable under the Information Technology Act, 2000 as amended in 2008.²⁷ Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity as he wants. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent. This is ripe time to spread awareness²⁸ among Netizens- Netizens means users of Internet.

7. Recognition of Cyber Torts Activities:

Recognizing various activities on the Internet as cyber tort has opened new ways of seeking remedy. Prosser²⁹ categorized the invasion of privacy into four separate torts; which has been acknowledged: 1) Unreasonable intrusion upon the seclusion of another; 2) Appropriation of another’s name or likeness; 3) Unreasonable publicity given to the other’s private life; and 4) Publicity that unreasonably places the other in a false light before the public

8. Preservation is the Norm and Forgetting a Struggle: Acknowledgment of Right to be Forgotten

The European Union Regulation of 2016 has recognized what has been termed as ‘the right to be forgotten’. According to this decision, “The impact of the digital age is that the information once published on the Internet remains permanent. Humans forget, but the internet does not forget and does not let humans forget. Any endeavor to remove information from the internet does not result in its absolute obliteration.

²⁷The Information Technology Act, 2000 as amended in 2008: **Section 66-C deals with the Punishment for identity theft and Section 66-D deals with the Punishment for cheating by impersonation by using computer resource**

²⁸Dalal P. Awareness of Cyber Law in India. 2010. Available at: <http://cyberlawsinindia.blogspot.in/2010/05/awareness-of-cyber-law-in-india.html>, visited on 5 October, 2017.

²⁹William L. Prosser, Privacy, 48 CAL. L. REV. 383 (1960), quoted in Justice K S Puttaswamy (Retd.) versus the Union of India, 2017 SC.

The foot prints always remain deep inside the web pages. It is thus, said that in the digital world preservation is the norm and forgetting a struggle.”People are not static, they change and grow through their lives. They evolve. They make mistakes. But they are entitled to re-invent themselves and reform and correct their mistakes.They should not be subjected to the consequences of their childish mistakes and naivety, their entire life.People change and an individual should be able to determine the path of his life and not be stuck only on a path of which he/she treaded initially. An individual should have the capacity to change his/her beliefs and evolve as a person. Individuals should not live in fear that the views they expressed will forever be associated with them and thus refrain from expressing themselves.³⁰

6. Conclusion

On the basis of analysis of this judgment, it is submitted that this decision has resolved tremendous problems existing in legal documents related to protection of privacy online.Each second,enormous amount of digital information is generated. Every interaction with the Internet, every credit card transaction, every change of password, every photo uploaded, every bank withdrawal, every magazine subscription is recorded digitally and linked to specific individuals. All this information, once it is collected in networked databases, can be sent instantly and cheaply around the globe. In this newly-commoditized information ‘e’-market, buyers anywhere can collate and manipulate the data for marketing, profiling, or more sinister purposes. Most people are not even aware what information has been collected or how it is being used. Prior to this decision, the Information Technology Act 2000 as amended in 2008 has added several provisions for data protection and imposed responsibility on the body corporate for preservation of data. However, this decision has provided a fertile platform for the enactment of new Data Privacy law in India. The systematic incorporation of essential elements like: Consent, Principle of Proportionality and Legitimacy, right to be forgotten and interference of others’ has settled several unsettled issues in cyberspace.

³⁰Michael L. Rustad and SannaKulevska, Conceptualizing the right to be forgotten to Enable Transatlantic Data Flow, 28 Harv.J.L. & Tech. 349.